SCOTTISH STATUTORY INSTRUMENTS

2004 No. 122

NATIONAL HEALTH SERVICE

The National Health Service (Tribunal) (Scotland) Amendment Regulations 2004

Made - - - -	*10th March 2004*
Laid before the Scottish Parliament - - - -	*11th March 2004*
Coming into force - -	*1st April 2004*

The Scottish Ministers in exercise of the powers conferred by sections 29(4) and (8)(a), 29A(5), 32, 32C(2), 105(7), 106(a) and 108(1) of the National Health Service (Scotland) Act 1978(**1**) and of all other powers enabling them in that behalf, and after consultation with the Council on Tribunals and its Scottish Committee in accordance with sections 8(1) and (3) of the Tribunal and Inquiries Act 1992(**2**), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the National Health Service (Tribunal) (Scotland) Amendment Regulations 2004 and shall come into force on 1st April 2004.

Amendment of the National Health Service (Tribunal) (Scotland) Regulations 2004

2.—(1) The National Health Service (Tribunal) (Scotland) Regulations 2004(**3**) are amended as follows.

(2) In regulation 2(1), 8, 9(2) to (4), 11(2) to (6), 12, 18(1), 20(2), 21(4), 22(1), 23(2), 24(4) to (8), 25(3), 26(1) and (2), 29(1) and (3) to (6) and 31(1), paragraph 8 of Schedule 1 and in Form 1, 2, 3, 4, 6, and 7 in Schedule 2 omit "or primary care NHS trust" in every place where it occurs.

(**1**) 1978 c. 29. Section 29(4) was inserted by the Health Act 1999 (c. 8) ("the 1999 Act"), section 58(1); section 29(8)(a) was inserted by the 1999 Act, section 58(1), amended by the Community Care and Health (Scotland) Act 2002 (asp 5), schedule 2, paragraph 2(4) and substituted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 5(3); section 29A was inserted by the 1999 Act, section 58; section 32 was amended by the National Health Service (Amendment) Act 1995 (c. 31) ("the 1995 Act"), section 11 and Schedule, and by the 1999 Act, Schedule 4, paragraph 50; section 32C was inserted by the 1995 Act, section 8; section 105(7) was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 5 and Schedule 7 and by the Health Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24; section 108(1) contains definitions of "prescribed" and "regulations" relevant to the exercise of statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(**2**) 1992 c. 53.

(**3**) S.S.I. 2004/38

(3) In regulation 2 (interpretation and forms)–

(a) omit the definitions of "the 1997 Act", "doctor" and "primary care NHS trust";

(b) in the definitions of "ophthalmic medical practitioner", "practitioner" and "relevant professional body" for "doctor" substitute "medical practitioner";

(c) after "practitioner" insert–

> ""primary medical services performers list" means a list maintained under the Primary Medical Services Performers Lists Regulations;
>
> "Primary Medical Services Performers Lists Regulations" means the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004(**4**);";

(d) in the definition of "representations" omit "or representations under paragraph 3(1) or (2) of Schedule 1 to the 1997 Act (representations against preferential treatment)"; and

(e) in the definition of "review" omit "or an inquiry into whether or not to give a direction under paragraph 5 (termination of directions) of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act.

(4) After regulation 3 (health schemes) insert–

"**List of health care professionals of a prescribed description**

3A. In section 29(8)(a) of the 1978 Act health care professionals of a prescribed description are medical practitioners.".

(5) In regulation 6 (submission of representations)–

(a) omit paragraph (2);

(b) in paragraph (3) after "paragraph" insert "(3A) or";

(c) after paragraph (3) insert–

> "(3A) Subject to paragraph (5), where representations are made that the second condition of disqualification is met and relate to a practitioner who has applied to join a primary medical services performers list but whose application has been deferred in accordance with regulation 6(3) of the Primary Medical Services Performers Lists Regulations, they shall be sent to the clerk to the Tribunal within 30 days of receipt of the confirmation that the applicant wishes to proceed with the application, and has provided details of any changes to the application and any information included in the application together with any changes to the application and information provided, pursuant to regulation 6(5) of those Regulations."; and

(d) in paragraph (5) for "(2) or (3)" substitute "(3) or (3A)".

(6) In regulation 9(3) omit "and primary care NHS Trust".

(7) In regulation 11(5) and (6) omit "or primary care NHS trusts" in each place where it occurs.

(8) In regulation 15(3)(c) omit "and primary care NHS trust".

(9) In regulation 21 (statement by the Tribunal)–

(a) in paragraph (1)–

(i) after sub paragraph (e) insert "and"; and

(ii) omit sub paragraph (f);

(b) in paragraph (3)(b) omit "or a direction under paragraph 4(1) of Schedule 1 to the 1997 Act"; and

(**4**) S.S.I. 2004/ 114.

(c) in paragraph (4) omit "or primary care NHS trusts".

(10) In regulation 25 (statement by the Tribunal following review)–

(a) in paragraph (1)(c) omit ", or where it is of the opinion that the disqualification of the applicant for inclusion in any list to which a direction under paragraph 4(1) of Schedule 1 (preferential treatment on transferring medical lists) to the 1997 Act related should be removed, a direction under paragraph 5 (termination of directions) of the said Schedule to that effect";

(b) in paragraph (2)–

(i) after sub-paragraph (b)(i) insert "or"; and

(ii) in subparagraph (b) omit–

"; or

(iii) in the case of a practitioner subject to a direction under paragraph 4(1) of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act, does not make a direction under paragraph (5) (termination of directions) of Schedule 1 to the 1997 Act"; and

(c) in paragraph (3) omit "or primary care NHS trusts".

(11) In regulation 26(2) (practitioner subject to inquiry in a fraud case) omit sub paragraph (a).

(12) In regulation 28 (publication of decisions of the Tribunal etc.)–

(a) after paragraph (c) insert "and";

(b) omit paragraph (d); and

(c) omit–

";

(f) any imposition or removal of a disqualification made in accordance with the provisions of paragraph 6 (direction in Northern Ireland) of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act".

(13) In regulation 29(1)–

(a) in paragraph (a) for ",(e) or (f)" substitute "or (e)"; and

(b) after "list" insert "(other than a primary medical services performers list)".

(14) Omit regulation 30 (publication of information about applications for preferential treatment).

(15) In Schedule 2 (forms for use in proceedings in connection with representations and applications)–

(a) in Form 1–

(i) in paragraph 1(a)–

(aa) for "[continued (5)]" substitute "continued"; and

(bb) for "undertake to provide or are approved to assist in providing" substitute "perform or undertake to provide";

(ii) in note (1) to the Form for "doctor" substitute "medical practitioner";

(iii) in note (3) to the Form–

(aa) for "medical" substitute "primary medical services performers"; and

(bb) for ", pharmaceutical or supplementary" substitute " or pharmaceutical"; and

(iv) omit note (5) to the Form.

(b) in Form 2–